

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

DDS No.: CS0004040

OAH No. 2023040284

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 27, 2023, at North Los Angeles County Regional Center in Chatsworth, CA.

Claimant appeared and represented herself at hearing.

Dana Lawrence, Fair Hearing and Administrative Procedures Manager for North Los Angeles County Regional Center (Regional Center or NLACRC) appeared on behalf of NLACRC.

Testimonial and documentary evidence was received. The record was left open for Claimant to submit exhibits into Case Center by October 4, 2023, which she indicated at hearing she was unable to upload prior to the September 27, 2023 hearing. NLACRC was ordered to file any objections to Claimant's additional exhibits by October 20, 2023. No additional exhibits were filed by Claimant by October 4, 2023. The record closed and the matter was submitted for decision on October 20, 2023.

ISSUE

Is Claimant eligible for Regional Center services as a consumer under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.). (All further statutory references are to the Welfare and Institutions Code unless otherwise designated.)

EVIDENCE RELIED UPON

Documents: Service Agency Exhibits 1 through 22; Claimant Exhibit A.

Testimony: Sandi Fischer, Ph.D., NLACRC Psychological Services Supervisor; Claimant.

SUMMARY

Claimant is a 64-year-old woman who is seeking Regional Center eligibility based on concerns of Autism Spectrum Disorder (ASD). Claimant was fully assessed by NLACRC and NLACRC reviewed all available records and concluded Claimant was not eligible for Regional Center services as she does not have a developmental disability as

defined by the Lanterman Act. Claimant appealed the Regional Center's denial of eligibility and this hearing took place. Claimant did not provide sufficient evidence at hearing to establish through a preponderance of the evidence she has ASD or any other qualifying developmental disability. Accordingly, Claimant is ineligible for NLACRC services under the Lanterman Act and her appeal is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 64-year-old woman who lives independently. On February 14, 2020, Claimant filed an application for Lanterman Act eligibility based on ASD. On her NLACRC intake application, Claimant wrote that the reason she was applying for Regional Center services was that: "[I] need an assessment & diagnosis to get training through [T]icket to [W]ork with assistance. They wont [sic] otherwise." (Exh. 6, p. A155.) (No evidence was presented at hearing by the parties regarding the Ticket to Work program.)

2. By Notice of Action letter dated December 29, 2022, NLACRC notified Claimant that after consideration of the evaluations conducted and assessment information, the NLACRC Interdisciplinary Eligibility Committee determined Claimant is not eligible for services under the Lanterman Act because Claimant does not suffer from a developmental disability, as defined in section 4512, subdivision (a).

3. On March 25, 2023, Claimant filed an appeal and timely request for a Fair Hearing.

Background

4. In the process of reaching its finding Claimant does not suffer from a developmental disability, Regional Center reviewed all available documentation including Claimant's psychological, educational, and medical records. A psychological assessment was completed by a NLACRC vendor, Dr. Anna Levi, on November 3, 2022, with Dr. Levi providing a diagnosis of major depressive disorder, recurrent episode, in full remission, persistent depressive disorder (dysthymia), generalized anxiety disorder, unspecified trauma, and stressor-related disorder. Accordingly, on December 28, 2022, the NLACRC Interdisciplinary Eligibility Committee determined Claimant did not meet Lanterman Act eligibility requirements.

5. After Claimant filed her request for a fair hearing, a mediation was held on May 31, 2023 with no resolution of the appeal issue. NLACRC unsuccessfully attempted to gather additional records, such as educational records which pre-date Claimant turning 18 prior to hearing. In response to Claimant's assertion that the memoir she wrote, "Drinking the Waters at the Shores of Hell," (memoir) contains her story and is a replacement for missing records, Dr. Sandi Fischer, read Claimant's entire memoir prior to providing testimony at hearing.

6. There is no dispute between the parties that Claimant does not suffer from cerebral palsy, epilepsy, intellectual disability (ID), or a disabling condition closely related to ID; or requiring treatment similar to that required by an individual with ID. Accordingly, the focus of this decision is on the question of whether Claimant is eligible for Lanterman Act services based on substantially disabling ASD.

Claimant's Educational and Medical Records and Psychological Assessment

EDUCATIONAL RECORDS

7. Claimant's only available educational records from the 1973 through 1976 time periods were obtained and evaluated by Regional Center. (Exh. 15.) At that time, Claimant was attending North Kitsap High School in Poulsbo, Washington, and was approximately 14, 15, and 16 years old. Claimant's grades were relatively low for the time period, with Claimant mostly earning C's and D's. However, Claimant's eleventh grade high school transcript shows that Claimant's was in the eightieth national percentile for reading vocabulary and eighty-seventh percentile for reading comprehension, with an overall average in the eighty-fifth percentile for reading. For language, Claimant was in the seventy-second national percentile for expressive language; sixty-eighth percentile for spelling, with an overall average of seventy-second percentile for language. Claimant's scores in math were well below the national percentile, with an overall fifth percentile average. Claimant's deficiencies in math potentially indicate a learning disability in that area, which could not conclusively be established because of the lack of additional educational records or testing from that time period.

8. None of Claimant's available educational records indicate the presence of ASD during Claimant's developmental period (i.e., originating before 18 years old). Accordingly, based on Regional Center's assessment, Claimant's educational records did not indicate the presence of ID and/or ASD.

MEDICAL RECORDS

9. Claimant's medical records do not support Claimant's assertion that she suffers from ASD. (Exhs. 3, 4, and 8.) Claimant was hospitalized twice for psychiatric issues in 2008 and 2012 based on major depression with suicidal ideation. Claimant did not provide evidence she has been diagnosed with ASD by any health care professional. For example, in response to NLACRC's request for an assessment and evaluation of Claimant, Claimant's then treating therapist, Rob Jost, MFT, indicated by letter dated August 18, 2020, that, while Claimant is interested in getting an autism evaluation, Claimant is diagnosed with major depressive disorder as well as Post Traumatic Stress Disorder (PTSD). (Exh. 8.)

SERVICE AGENCY ASSESSMENTS

September 17, 2020 Social Assessment

10. On September 17, 2020, NLACRC Intake Coordinator Maile Asenbauer, M.A., conducted a Social Assessment of Claimant by telephone. Ms. Asenbauer prepared a Social Assessment report that summarized the information provided during the interview and her recommendations. (Exh. 5.)

11. Ms. Asenbauer reviewed Claimant's educational records (report card and diploma), an August 18, 2020, letter written by Mr. Jost, medical records, and Claimant's July 2, 2020 Self-Profile Evaluation. Claimant referred herself to Regional Center because she suspected she may have autism and that it was never diagnosed when she was younger. At the time of the Social Assessment, Claimant was almost 61 years old and had been receiving counseling services with Mr. Jost since November 2019 with a diagnosis of Major Depressive Disorder and Post-Traumatic Stress

Disorder. Claimant reported a history of neglect, abuse, molestation, and rape in her Self-Profile Evaluation.

12. Claimant reported she had been told she “talks like a book” and has an expressionless face, which is “creepy.” (Exh. 5, p. A147.) She further reported she was stumbling through life without making any prolonged gains; struggled socially; had no friends; and had trouble making work relationships. Claimant reported people think she is weird and don’t want to deal with her socially. Claimant was struggling to get work and trying to obtain assistance through Ticket to Work, an employment opportunity program.

13. Claimant described she lived independently in a rent-controlled apartment as part of the Safe at Home program. She was not in contact with her family; her parents are deceased. Claimant reported she did not want anyone to touch or hug her as a child and that she always tries to get space between herself and others. Claimant reported no significant motor, self-care, cognitive, or communication issues. Claimant reported she struggled academically in school, having a hard time learning and processing information being taught, especially in math. Claimant never had an Individual Education Plan (IEP) or assistance of any kind in school. Claimant attended Kodiak High School in Alaska. She was in general education classes and dropped out at 16-years-old to go to work. In 1979, she earned her General Education Degree (GED). From 1987 through 1989, Claimant attended Seattle Central Community College and earned an associate degree in communications (visual and applied communications).

14. Claimant’s medical history included diagnoses for depression and PTSD. At the time of the Social Assessment, she reported she took no medications. Claimant reported she had tried taking medication for her diagnoses, but it made her ill. As

previously noted above, she had been admitted to Glendale Adventist Psychiatric Hospital in 2009 and 2012 for suicidal ideation. She reported being seven years sober from alcohol with no history of abusing drugs. Claimant reported a family history of mental health issues including depression and suspected her mother may have been bipolar. Claimant's mother committed suicide when Claimant was in her twenties. A half-sister committed suicide in 2019. Claimant reported she suspects her cousin, uncle, and paternal grandmother are all individuals with undiagnosed autism.

15. Claimant is an unconserved female who is supported by social security. Claimant also reported a small settlement from an insurance company. Claimant reported working since 1974 and was trying to get a job again. She worked in various positions including working at a seafood cannery at the age of 16; being a taxi dispatcher at the age of 17; being a cocktail waitress in her 20s; as an apartment manager; painting houses; and as a radio disc jockey. After earning her communications degree, Claimant worked as a team manager at Technicolor and on a coding project. She reported being successful in technical sales and does well in sales jobs. Claimant worked at Apple for five years. At the time of the assessment, Claimant was trying to interview for jobs and trying to get assistance through Ticket to Work. She is connected to the Department of Rehabilitation.

16. Claimant reported her primary issue is in the social/behavioral area. Claimant reported she attempted to slit her wrists when she was 12-years-old; physically fought with her brothers; had a hard time with change; reported sucking her thumb until she was nine; twisting her hair on her finger when focused on something or reading; shaking her foot back and forth; some flapping of her hands; and lining up her model horses "just so" when she was young. (Exh. 5, p. A149.) Claimant reported certain sounds bother her and stated any prolonged machine sound can be difficult.

Claimant reported she does not typically make eye contact and had a hard time doing so when she was younger. She indicated she had trouble focusing in school because she was in her "own little world." (*Id.*)

17. Claimant reported she had always had difficulty reading social cues and often felt misunderstood when relating to others. She reported being bullied by her peers, being called weird. Claimant reported having no friends and was quite lonely. She indicated she had difficulty sustaining relationships and infrequently had some friends over the years.

18. Based on the intake interview, Ms. Asenbauer recommended that Claimant complete a medical and psychological evaluation, as needed, and that Service Agency review medical and school records and determine eligibility upon completion of the as needed evaluations.

19. Claimant did not pursue regional center eligibility for a period of almost two years due to her inability to locate school records. On February 4, 2022, Claimant contacted NLACRC via email to resume seeking eligibility. (Exh. 9.)

October 28, 2022 Social Assessment

20. On October 28, 2022, Hillary Zebberman, LCSW, NLACRC Intake Vendor conducted a second Social Assessment of Claimant by telephone. Ms. Asenbauer prepared a Social Assessment report that summarized the information provided during the interview and her recommendations. (Exh. 10.)

21. Claimant reported information consistent with her first Social Assessment, as described in Factual Findings 11 through 17. In addition, Claimant reported she had a contentious relationship with her building owner and had called

the police because she believed the fire detector in her apartment had a camera in it, which was not confirmed by police. Claimant did not want to press the issue because she feared she would end up homeless. Prior to the pandemic, Claimant had gone to alcoholic anonymous (AA) meetings, but stopped because she reported there were unsafe people in AA.

22. Based on the intake interview, Ms. Zebberman recommended that Claimant complete a medical and psychological evaluation, as needed, and that Service Agency secure medical and school records and determine eligibility upon completion of the as needed evaluations. In addition, Claimant was referred to apply for Medi-Cal, Access Transportation, and Section 8 housing.

November 3, 2022 Psychological Assessment

23. On November 3, 2022, Dr. Levi conducted a telehealth psychological assessment of Claimant to determine current levels of functioning and to assess Claimant for possible ASD characteristics. She prepared a written Psychological Assessment of her findings and conclusions. (Exh. 12.) (The assessment contains at least two typo factual errors, including incorrectly referencing to Claimant as a child and indicating she lives with her family.) (*Id.* at pp. A2 and A3.)

24. Dr. Levi interviewed Claimant, reviewed records, and administered the Wechsler Primary and Preschool Scale of Intelligence, Fourth Edition (WPPSI-IV), and the Autism Diagnostic Observation Schedules - 2nd Edition Module 4 (ADOS-Module 4). No educational documents were available at the time of Dr. Levi's assessment.

25. During her interview, Claimant reported a traumatic history, as set forth in Factual Findings 11 through 21. Claimant reported she lost her job as a salesperson at Apple in 2013 due to carrying something too heavy and sustaining injuries in the

accident that have never fully healed. She also asserted the Apple manager did not like her because she was old and because she engaged in whistleblowing activities during her employment.

26. Dr. Levi's ADOS-Module 4 behavioral observations were that Claimant presented with good eye contact and she used appropriate gestures and variable facial expressions that were appropriate to the social situation (including a social smile). Dr. Levi further observed Claimant used "a good sense of humor, appropriate to social context"; demonstrated good creativity; and was able to use good gestures and mime and excellent verbal explanation in the right sequence and detail. (Exh. 12, pp. A3-A4.)

27. The WAIS-IV was administered to assess Claimant's cognitive level of functioning. Claimant's WAIS-IV testing results, both verbal comprehension and perceptual reasoning, were in the average range. Dr. Levi therefore concluded based on the DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition) diagnosis criteria, requiring intellectual and adaptive functioning deficits in conceptual, social, and practical domains, that Claimant did not have an intellectual disability.

28. The ADOS-2 Module 4 was administered to assess Claimant for autism-spectrum characteristics. All three scores (in communication, social interaction and the overall score) were below the autism cutoff scores (i.e., not indicative of autism). Applying the DSM-5 seven criteria for the diagnosis of ASD (including three in the area of social communication and social interaction, and four in the area of restricted or repetitive activities), Dr. Levi concluded, in sum, that Claimant did not exhibit persistent deficits in social communication and social interaction, nonverbal communicative behaviors, stereotyped or repetitive motor movements, use of objects or speech, insistence on sameness, inflexible adherence to routines or ritualized patterns of behavior, highly restricted, fixated interests that are abnormal in intensity

or focus, or hyper-or hypo reactivity to sensory input or unusual interests in sensory aspects of environment. Claimant's apparent sustained deficit in developing, maintaining and understanding social relationships was noted by Dr. Levi to be an impairment that results from mood disorders, such as repeated episodes of clinical depression, which were present in Claimant's history. Dr. Levi concluded that Claimant's one apparent social relationship deficit did not meet the DSM-5 criteria for the diagnosis of ASD.

29. Dr. Levi's provisional DSM-5 diagnoses, based on history, were that Claimant suffered from major depressive disorder, recurrent episode, in full remission (F33.42); Persistent depressive disorder (dysthymia) (F34.1.); and generalized anxiety disorder (F41.1.)

30. Dr. Levi's diagnosis was based on the following diagnostic impressions:

[Claimant] has been through many traumatic events since early childhood, including neglect and emotional, physical, and sexual abuse. In the past, she coped with emotional distress through excessive drinking. She was able to sustain sobriety for 10 years. Past trauma appears to have affected [Claimant's] relationships, leaving her without any close ties, and has affected her personality traits. She had past suicidal ideation and was hospitalized for suicidal attempts since the age of 12. Currently, there is no suicidal ideation or intent, but this must be continually monitored. She continues to suffer from depression and anxiety, and would benefit from continued therapy for trauma and depression. This assessment focused primarily on intellectual and

autism testing. [ASD] was ruled out. Since no personality assessment or assessment of emotional functioning was done, this examiner is utilizing [Claimant's] self-report and records to give . . . mental health diagnosis.

(Exh. 12, p. A7.)

31. Following review of Dr. Levi's assessment and the other documentation and records, on December 28, 2022, the Interdisciplinary Eligibility Determination Committee (Committee) concluded that Claimant was ineligible for services.

Hearing

SERVICE AGENCY

32. Dr. Fischer, NLACRC's Psychological & Intake Services Supervisor, testified at hearing. In response to Claimant's assertion that the Service Agency should consider her memoir in rendering its eligibility decision based on the lack of significant available records from Claimant's pre-18 years, Dr. Fischer read Claimant's memoir prior to hearing for the purpose of looking for an eligible diagnosis. She opined that while Claimant's description of walking and flapping her arms when she was a child could be associated with ASD, the memoir contents did not support an ASD diagnosis.

33. Dr. Fischer further opined Claimant's educational records, described in Factual Findings 7 and 8, also did not support an ID and/or ASD diagnosis. Dr. Fischer acknowledged Claimant's struggle with social skills, but noted that no ASD diagnosis was made by any health care professional who treated Claimant, as described in Factual Finding 9. In addition, there was a lack of evidence that ASD was present during Claimant's developmental period.

34. In response to Claimant's assertion that Dr. Levi's assessment results were unreliable because Claimant was anxious at the last-minute nature of Dr. Levi's assessment (Exh. 14), Dr. Fischer opined Claimant's last-minute anxiety would not impact or change Dr. Levi's diagnosis. Specifically, Dr. Fischer testified Claimant's results on the WAIS-IV and the ADOS-2 Module 4 were "not at all in the autism range," and therefore would not support an ASD diagnosis.

CLAIMANT

35. Claimant credibly and articulately testified at hearing. Claimant testified that she "doesn't feel seen," and disagrees with her past depression diagnoses, testifying she suffers from pain associated with a past work related injury, not depression. Claimant has been treated at various times with antidepressants, but reported they never helped her. Claimant believes, after reading the book, "[L]ook [M]e [I]n [T]he [E]ye," she suffers from ASD, has been misdiagnosed her whole life, and wrongfully assessed as an adult. Claimant expressed frustration in her inability to maintain social relationships and testified she has "no friends" and is "just taking up space."

36. Claimant intends to write another book and go back to school to study English. She has written a couple of screenplays. Claimant wants to stand up to wrongdoing and described she has an "outsized sense of right and wrong."

37. The record was left open to provide Claimant an opportunity to submit additional exhibits in support of her claim. However, no additional exhibits were submitted by Claimant prior to the record closing in this matter on October 20, 2023.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. (§ 4500 et seq.) A fair hearing to determine the rights and obligations of the parties is referred to as an appeal of the service agency's decision. Claimant timely requested a fair hearing, and jurisdiction for this case was established. (Factual Findings 1-3.)

Burden and Standard of Proof

2. The party asserting a condition which would make the individual eligible for a benefit or service has the burden of proof to establish he or she has the condition. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161.) Here, Claimant bears the burden of proving by a preponderance of the evidence Claimant has a developmental disability as defined by the Lanterman Act and is eligible for regional center services. (Evid. Code, § 115.)

Lanterman Act Eligibility Requirements

3. A developmental disability is a disability that originates before an individual turns 18 years old. This disability must be expected to continue indefinitely and must constitute a substantial disability for the individual. Developmental disabilities are limited to cerebral palsy, epilepsy, ASD, ID, or a disabling condition found to be closely related to intellectual disability or to require treatment similar to that required for an individual with an intellectual disability (5th Category). Developmental disabilities do not include other handicapping conditions that are solely physical in nature, or which are solely psychiatric disorders or learning disabilities. (§ 4512, subd. (a); Cal. Code Regs., tit. 17, § 54000.)

4. Section 4512, subdivision (a), defines “developmental disability” as:

a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual.

[T]his term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

5. Section 4643, subdivision (b), provides:

In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

6. "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age: (A) Receptive and expressive language; (B) Learning; (C) Self-care; (D) Mobility; (E) Self-direction; (F) Capacity for independent living; (G) Economic self-sufficiency.

(Cal. Code Regs., tit. 17, § 54001, subd. (a).)

7. In addition to proving a "substantial disability," a person must show that her disability fits into one of the five categories of eligibility outlined in section 4512. The first four categories are specified as intellectual disability, cerebral palsy, epilepsy, and autism. The fifth and last category of eligibility is defined as "disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability." (§ 4512, subd. (a).)

8. There is no dispute between the parties that Claimant does not suffer from the developmental disabilities of cerebral palsy, epilepsy, ID, or a disabling condition found to be closely related to intellectual disability or require treatment similar to that required for an individual with intellectual disability (5th Category).

Accordingly, the legal analysis of eligibility is limited to eligibility from the developmental disability of ASD.

DSM-5 Definitions of Autism Spectrum Disorder

9. The DSM-5 defines ASD as having the following four essential features. First, an individual must have persistent impairment in reciprocal social communication and social interaction (Criterion A), as manifested either currently or historically by all the following: (1) deficits in social-emotional reciprocity, (2) deficits in nonverbal communication behaviors used for social interaction, and (3) deficits in developing, maintaining, and understanding relationships. Second, the individual must have restricted, repetitive patterns of behavior, interests or activities (Criterion B), as manifested by at least two of the following: (1) stereotyped or repetitive motor movement, use of objects or speech, (2) insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior, (3) highly restricted, fixated interests that are abnormal in intensity or focus, and (4) hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment. Third, these symptoms must be present in early childhood (Criterion C). Fourth, these symptoms must limit or impair everyday functioning. (Criterion D). (Exh. 17.)

10. Claimant did not establish by a preponderance of the evidence that she has a “developmental disability” as defined under section 4512. Claimant is not substantially disabled due to ASD. She does not have significant functional limitations in a major life activity, as appropriate to her age. While the evidence showed that Claimant did have social relationship issues that may manifest consistently with the DSM-5’s Criterion A requirements for a diagnosis of ASD, Claimant did demonstrate sufficient deficits to meet the requirements of Criterion A or to meet the DSM 5’s other criterion requirements for an ASD diagnosis. Rather, Claimant’s medical history

established that the more probable cause of her social issues are related to her medically diagnosed depression and anxiety. She does not meet the DSM-5 diagnostic criteria for ASD, based on the psychological evaluation completed by Dr. Levi, the testimony of Dr. Fischer, and the records presented in evidence.

Conclusion

11. Based on the foregoing, Claimant's evidence was not sufficient to establish eligibility under the Lanterman Act for Regional Center services. (Factual Findings 1-37; Legal Conclusions 1-10.)

ORDER

Claimant's appeal is denied. NLACRC's determination that Claimant is not eligible under the Lanterman Act for Regional Center services is affirmed.

DATE:

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration under Welfare and Institutions Code

section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.